

ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018
COMMITTEE STATEMENT
LB194

Hearing Date: Tuesday February 21, 2017
Committee On: Banking, Commerce and Insurance
Introducer: Vargas
One Liner: Change provisions of the Credit Services Organization Act, Delayed Deposit Services Licensing Act, and Nebraska Installment Loan Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Baker, Brewer, Harr, Kolterman, Lindstrom, McCollister, Schumacher, Williams
Nay:
Absent:
Present Not Voting:

Verbal Testimony:

Proponents:

Senator Tony Vargas
Charles Karpf
Richard Blocker
Ben Bolmeier
Glenda Wood
Elsa Ramon-Moody
Mick Wagner
Diana LaCroix
Melissa Wey
Danielle Savington
Jonathan Renteria
Tom Venzor
Gabriela Pedroza
Robert Haller
Scott Schreve
Mark Intermill
Jamie Snyder
Jennifer Gaughan
Nick Bourke
James Goddard

Representing:

Introducer
Center for Rural Affairs/Open Sky Policy Institute
OTOC/Self
Self
Self
Self
Veterans Legal Support Network
Self
Self
Nebraskans for Peace
Self
NE Catholic Conference
Self
Voice of the Poor/Society of St. Vincent de Paul
United Methodist Church
AARP
Habitat for Humanity, Columbus
Legal Aid of NE
The Pew Charitable Trust
NE Appleseed

Opponents:

Brad Hill
Virgil Joe Parks Jr.
Paul Bencker
Colin Fury

Representing:

NE Financial Services Assn/MM Finance
Parks Muz Sys
A & P Check Cashing
Self

Neutral:

Director Mark Quandahl
Brandon Luetkenhaus

Representing:

NE Department of Banking and Finance
NE Credit Union League

Summary of purpose and/or changes:

OVERVIEW

This bill would substantially amend the Delayed Deposit Services Licensing Act to change the manner in which the business of payday advances is conducted and is regulated by the Nebraska Department of Banking and Finance.

The bill would provide that a licensee, in connection with a delayed deposit loan, may receive only: interest of no more than thirty-six percent per annum; a monthly maintenance fee of the lesser of five percent of the loan amount or twenty dollars; and charges for presentation of nonnegotiable instruments not to exceed fifteen dollars, court costs, and attorney's fees, and the attorney's fees may not exceed the loan amount.

The bill would provide that a licensee shall not lend an amount greater than five hundred dollars, plus allowable fees and interest, to any borrower.

The bill would provide that delayed deposit loans shall be precomputed loans, payable in equal installments of principal, fees, interest, and charges combined. The bill would provide that a total monthly payment shall not exceed the greater of five percent of a borrower's gross, pretax monthly income or six percent of the borrower's net, posttax monthly income.

The bill would amend the Nebraska Installment Loan Act to provide that the minimum term of an installment loan shall be six months.

SUMMARY

The bill would provide, section by section, as follows:

Section 1 would amend section 45-804 of the Credit Services Organization Act to provide that a credit services organization shall not charge any fees in connection with a loan governed by the Nebraska Installment Loan Act.

Section 2 would amend section 45-901 of the Delayed Deposit Services Licensing Act to provide for assignment of new sections within the act.

Section 3 would amend section 45-902 of the Delayed Deposit Services Licensing Act to provide for definitions. This section would amend the definition of: "delayed deposit services business" (a person who engages in the practice of offering or providing a delayed deposit loan, who arranges a delayed deposit loan for a third party, or who acts as an agent for a third party rather than a person who for a fee accepts a check dated subsequent to the date it was written or accepts a check dated on the date it was written and holds the check for a period of days prior to deposit or presentment pursuant to agreement). This section would enact new definitions of: "annual percentage rate;" "borrower;" "default;" "delayed deposit loan" (a consumer loan whereby a licensee, for a fee, accepts a dated instrument from the borrower as sole security, agrees to hold the instrument for a period of time prior to deposit or negotiation, and pays to the borrower, credits the borrower's account, or pays to another person on the borrower's behalf the amount of the instrument, less charges permitted under the act); "department;" "instrument" (a check, draft, or authorization to transfer or withdraw funds from an account); and "loan amount" (the amount financed as calculated pursuant to Regulation Z under the federal Truth and Lending Act).

Section 4 would amend section 45-904 of the Delayed Deposit Services Licensing Act to provide that any delayed deposit loan made by a person required to be licensed but is not licensed is void, and such person has no right to collect, receive, or retain any principal, interest, or fees.

Section 5 would amend section 45-906 of the Delayed Deposit Services Licensing Act to increase the fee for the

application for a license from "five hundred" dollars to "one thousand" dollars.

Section 6 would amend section 45-907 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 7 would amend section 45-908 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance shall issue a license to an applicant if the director determines, among other things, that the applicant has assets of at least "fifty thousand" dollars rather than "twenty-five" thousand dollars available for operating the delayed deposit services business.

Section 8 would amend section 45-910 of the Delayed Deposit Services Licensing Act to increase the annual license renewal fee from "five hundred" dollars to "five hundred fifty" dollars for the main office location and for each branch office location.

Section 9 would amend section 45-911 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 10 would amend section 45-915 of the Delayed Services Licensing Act to increase the fee from "one hundred fifty" dollars to "five hundred" dollars for each request by a licensee to the Director of Banking and Finance for approval to change the location of a designated principal place of business, to establish a branch office, or to change the location of a branch office.

Section 11 would amend section 45-915.01 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 12 would amend section 45-917 of the Delayed Deposit Services Licensing Act to provide that each delayed deposit loan transaction shall be documented by a written agreement, including disclosures, signed by both the licensee and the borrower.

Section 13 would enact a new section in the Delayed Deposit Services Licensing Act to provide that every licensee shall conspicuously display a schedule of all finance charges, fees, interest, other charges, and penalties for services provided by the licensee, and that the notice shall be posted at every office of the licensee.

Section 14 would amend section 45-918 of the Delayed Deposit Services Licensing Act to provide that delayed deposit loans shall be precomputed loans, payable in substantially equal installments of principal, fees, interest, and charges combined, and that the total monthly payment shall not exceed the greater of five percent of a borrower's gross, pretax monthly income or six percent of the borrower's net, posttax monthly income.

Section 15 would enact a new section in the Delayed Deposit Services Licensing Act to provide that licensees may charge, collect, and receive only: interest of no more than thirty-six percent per annum; a monthly maintenance fee of the lesser of five percent of the loan amount or twenty dollars (such fees shall not be charged to individuals on active military duty or their spouses or dependents); and charges permitted for the presentation of nonnegotiable instruments. This section would provide that a licensee shall not charge, collect, or receive a total amount of fees, interest, and charges that exceeds fifty percent of the original loan amount. This section would provide that no licensee shall charge, collect, or receive any finance charges, fees, or interest for loan brokerage, insurance, or any other ancillary products.

Section 16 would enact a new section in the Delayed Deposit Services Licensing Act to provide that if an instrument held by a licensee is returned unpaid to the licensee due to insufficient funds, a closed account, a stop-payment order, or other reason, the licensee may exercise all civil means to collect the face value of the instrument. This section would provide that a licensee may contract for and collect one returned instrument charge for each delayed deposit loan, not to exceed fifteen dollars, plus court costs and attorney's fees, and that attorney's fees may not exceed the loan amount.

Section 17 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee shall accept prepayment from a borrower without charging a penalty, and that upon prepayment, the licensee shall refund a prorated portion of all interest and fees.

Section 18 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee shall not lend an amount greater than five hundred dollars, plus allowable fees and interest, to any borrower.

Section 19 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a borrower has the right to rescind a delayed deposit loan, and that a borrower has the right to redeem an instrument.

Section 20 would enact a new section to provide that deferred presentment shall be permitted only for instruments with an amount of five hundred dollars or less, plus allowable fees and interest. This section would provide that a licensee may pay the proceeds from a delayed deposit loan to the borrower in the form of a check, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction.

Section 21 would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that no licensee shall enter into more than one delayed deposit loan with the same borrower at any one time (rather than no licensee shall at any one time hold from any one maker more than two checks). This section would provide that no licensee shall at any one time hold from any one borrower an instrument or instruments in an aggregate amount of more than five hundred dollars, plus allowable fees and interest (rather than no licensee shall at any one time hold from any one maker a check or checks in the aggregate face amount of more than five hundred dollars). This section would provide that a licensee may hold an instrument and delay completion of a delayed deposit loan beyond the due date, but the licensee shall not charge any additional charges or fees for doing so. This section would provide that no licensee shall engage, in connection with a delayed deposit loan, in unfair or deceptive trade practices under the Uniform Deceptive Trade Practices Act.

Section 22 would amend section 45-921 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of administrative fines collected by the Department of Banking and Finance.

Section 23 would amend section 45-922 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 24 would amend section 45-923 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may issue a cease and desist order to prohibit a licensee in violation of the act from making additional delayed deposit loans.

Section 25 would amend section 45-925 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 26 would enact a new section in the Delayed Deposit Services Licensing Act to provide that licensees shall annually provide information specified in this section to the Director of Banking and Finance who shall annually report it and the total number of licensees to the Banking, Commerce and Insurance Committee of the Legislature.

Section 27 would enact a new section in the Delayed Deposit Services Licensing Act to provide for acceleration of the entire unpaid loan balance for a delayed deposit loan in default.

Section 28 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee shall provide notice to a borrower prior to the licensee's attempt to collect on a borrower's account and that a licensee shall not attempt to deposit or negotiate an instrument after two consecutive failed collection attempts unless the licensee has obtained a new, written payment authorization from the borrower.

Section 29 would amend section 45-927 of the Delayed Deposit Services Licensing Act to increase the amount of each annual renewal fee for a main office and for a branch office from "three hundred fifty" dollars to "four hundred" dollars credited to the Financial Literacy Cash Fund.

Section 30 would amend section 45-1001 of the Nebraska Installment Loan Act to provide for assignment of section 31 within the act.

Section 31 would enact a new section in the Nebraska Installment Loan Act to provide that the minimum term of a loan

contract for a loan governed by the act shall be six months from the loan transaction date.

Section 32 would provide for an operative date of January 1, 2018.

Section 33 would provide for repealers of the amendatory sections.

Explanation of amendments:

The committee amendments would become the bill and would provide, section by section, as follows:

Section 1 would amend section 45-804 of the Credit Services Organization Act to provide that a credit services organization shall not charge any fees in connection with a loan governed by the Nebraska Installment Act.

Section 2 would amend section 45-901 of the Delayed Deposit Services Licensing Act to provide for assignment of new sections within the act.

Section 3 would amend section 45-902 of the Delayed Deposit Services Licensing Act to provide for definitions. This section would amend the definition of "check" to include "an authorization to debit an account electronically." This section would enact new definitions of: "annual percentage rate;" "default" (a maker's failure to repay a delayed deposit transaction in compliance with the terms contained in a delayed deposit service agreement); "department;" and "maker" (an individual who receives a delayed deposit transaction).

Section 4 would amend section 45-904 of the Delayed Deposit Services Licensing Act to provide that any delayed deposit transaction made by a person required to be licensed but is not licensed is void, and such person has no right to collect, receive, or retain any principal, interest, or fees.

Section 5 would amend section 45-907 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 6 would amend section 45-911 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 7 would amend section 45-915.01 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 8 would amend section 45-917 of the Delayed Deposit Services Licensing Act to provide that the notice that a licensee is required to give to a maker shall be expanded to include (1) the name of the maker, transaction date, and transaction amount; (2) the payment due date and total payment due; and (3) the total of fees on the transaction, expressed as both a dollar amount and an annual percentage rate. This section would further provide that the notice shall state that (1) this type of service should be used only to meet short-term cash needs; (2) a transaction shall not be for more than \$500 in total, including fees and charges; (3) a maker has the right to rescind a transaction before the end of the next business day; and (4) the maker has the right to rescind an authorization for electronic payment.

Section 9 would amend section 45-918 of the Delayed deposit Services Licensing Act to provide that fees permitted under this section (not more than \$15 per \$100) shall not be charged to individuals on active military duty or their spouses or dependents in an amount that exceeds what is allowed under federal law.

Section 10 would enact a new section in the Delayed Deposit Services Licensing Act to provide that if a check held by a licensee is returned unpaid to the licensee due to insufficient funds, a closed account, a stop-payment order, or other reason, the licensee may exercise all civil means to collect the face value of the check. This section would provide that a licensee may contract for and collect one returned check charge for each delayed deposit, not to exceed fifteen dollars, plus court costs and attorney's fees, and that attorney's fees may not exceed the amount of the check. This

section would provide that a returned check charge shall not be allowed if, due to forgery or theft, the check is dishonored by the financial institution.

Section 11 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee shall accept prepayment from a maker without a penalty.

Section 12 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a maker has the right to rescind a transaction before the end of the next business day, and that a maker has the right to redeem a check.

Section 13 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a licensee may pay the proceeds from a transaction to the maker in the form of a check, money order, cash, stored value card, internet transfer, or authorized automated clearinghouse transaction. This section would further provide that a licensee may utilize electronic payment through transfer or withdrawal of funds from the maker's account, but only with written authorization of the maker.

Section 14 would amend section 45-919 of the Delayed Deposit Services Licensing Act to provide that a licensee shall not (1) charge for loan brokerage, insurance, or any other ancillary products, (2) engage in unfair or deceptive practices or advertising, or (3) attempt to negotiate a check after two consecutive failed collection attempts unless the licensee obtains a new, written authorization from the maker.

Section 15 would enact a new section in the Delayed Deposit Services Licensing Act to provide that a maker who cannot pay back a transaction when due may elect once in any twelve-month period to repay the transaction by means of an extended payment plan pursuant to requirements set forth in this section.

Section 16 would amend section 45-921 of the Delayed Deposit Services Licensing Act to update provisions regarding disposition of administrative fines collected by the Department of Banking and Finance.

Section 17 would amend section 45-922 of the Delayed Deposit Services Licensing Act to harmonize terminology.

Section 18 would amend section 45-923 of the Delayed Deposit Services Licensing Act to provide that the Director of Banking and Finance may issue a cease and desist order to prohibit a licensee in violation of the act from making additional delayed deposit transactions.

Section 19 would enact a new section in the Delayed Deposit Services Licensing Act to provide that licensees shall annually provide information specified in this section to the Director of Banking and Finance who shall annually report it and the total number of licensees to the Clerk of the Legislature.

Section 20 would amend section 45-1001 of the Nebraska Installment Loan Act to provide for assignment of section 21 within the act.

Section 21 would enact a new section in the Nebraska Installment Loan Act to provide that the minimum term of a loan contract for a loan governed by the act shall be six months from the loan transaction date.

Section 22 would provide for repealers of the amendatory sections.

Brett Lindstrom, Chairperson